

1 AN ACT relating to the taxation of various gun safety measures.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 139.010 (Effective January 1, 2023) is amended to read as
4 follows:

5 As used in this chapter, unless the context otherwise provides:

6 (1) (a) "Admissions" means the fees paid for:

7 1. The right of entrance to a display, program, sporting event, music
8 concert, performance, play, show, movie, exhibit, fair, or other
9 entertainment or amusement event or venue; and

10 2. The privilege of using facilities or participating in an event or activity,
11 including but not limited to:

12 a. Bowling centers;

13 b. Skating rinks;

14 c. Health spas;

15 d. Swimming pools;

16 e. Tennis courts;

17 f. Weight training facilities;

18 g. Fitness and recreational sports centers; and

19 h. Golf courses, both public and private;

20 regardless of whether the fee paid is per use or in any other form,
21 including but not limited to an initiation fee, monthly fee, membership
22 fee, or combination thereof.

23 (b) "Admissions" does not include:

24 1. Any fee paid to enter or participate in a fishing tournament; or

25 2. Any fee paid for the use of a boat ramp for the purpose of allowing boats
26 to be launched into or hauled out from the water;

27 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of

- 1 which is to attract public attention to a product, person, business, or organization, or
2 to attempt to sell, popularize, or secure financial support for a product, person,
3 business, or organization. As used in this definition, "product" means tangible
4 personal property, an item transferred electronically, or a service;
- 5 (3) "Business" includes any activity engaged in by any person or caused to be engaged
6 in by that person with the object of gain, benefit, or advantage, either direct or
7 indirect;
- 8 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 9 (5) (a) "Cosmetic surgery services" means modifications to all areas of the head,
10 neck, and body to enhance appearance through surgical and medical
11 techniques.
- 12 (b) "Cosmetic surgery services" does not include reconstruction of facial and
13 body defects due to birth disorders, trauma, burns, or disease;
- 14 (6) "Department" means the Department of Revenue;
- 15 (7) (a) "Digital audio-visual works" means a series of related images which, when
16 shown in succession, impart an impression of motion, with accompanying
17 sounds, if any.
- 18 (b) "Digital audio-visual works" includes movies, motion pictures, musical
19 videos, news and entertainment programs, and live events.
- 20 (c) "Digital audio-visual works" shall not include video greeting cards, video
21 games, and electronic games;
- 22 (8) (a) "Digital audio works" means works that result from the fixation of a series of
23 musical, spoken, or other sounds.
- 24 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
25 readings of books or other written materials, speeches, or other sound
26 recordings.
- 27 (c) "Digital audio works" shall not include audio greeting cards sent by electronic

1 mail;

2 (9) (a) "Digital books" means works that are generally recognized in the ordinary and
3 usual sense as books, including any literary work expressed in words,
4 numbers, or other verbal or numerical symbols or indicia if the literary work is
5 generally recognized in the ordinary or usual sense as a book.

6 (b) "Digital books" shall not include digital audio-visual works, digital audio
7 works, periodicals, magazines, newspapers, or other news or information
8 products, chat rooms, or Web logs;

9 (10) (a) "Digital code" means a code which provides a purchaser with a right to obtain
10 one (1) or more types of digital property. A "digital code" may be obtained by
11 any means, including electronic mail messaging or by tangible means,
12 regardless of the code's designation as a song code, video code, or book code.

13 (b) "Digital code" shall not include a code that represents:

- 14 1. A stored monetary value that is deducted from a total as it is used by the
15 purchaser; or
- 16 2. A redeemable card, gift card, or gift certificate that entitles the holder to
17 select specific types of digital property;

18 (11) (a) "Digital property" means any of the following which is transferred
19 electronically:

- 20 1. Digital audio works;
- 21 2. Digital books;
- 22 3. Finished artwork;
- 23 4. Digital photographs;
- 24 5. Periodicals;
- 25 6. Newspapers;
- 26 7. Magazines;
- 27 8. Video greeting cards;

- 1 9. Audio greeting cards;
- 2 10. Video games;
- 3 11. Electronic games; or
- 4 12. Any digital code related to this property.
- 5 (b) "Digital property" shall not include digital audio-visual works or satellite
- 6 radio programming;
- 7 (12) (a) "Direct mail" means printed material delivered or distributed by United States
- 8 mail or other delivery service to a mass audience or to addressees on a mailing
- 9 list provided by the purchaser or at the direction of the purchaser when the
- 10 cost of the items are not billed directly to the recipient.
- 11 (b) "Direct mail" includes tangible personal property supplied directly or
- 12 indirectly by the purchaser to the direct mail retailer for inclusion in the
- 13 package containing the printed material.
- 14 (c) "Direct mail" does not include multiple items of printed material delivered to
- 15 a single address;
- 16 (13) "Directly used in the manufacturing or industrial processing process" means the
- 17 process that commences with the movement of raw materials from storage into a
- 18 continuous, unbroken, integrated process and ends when the finished product is
- 19 packaged and ready for sale;
- 20 (14) (a) "Extended warranty services" means services provided through a service
- 21 contract agreement between the contract provider and the purchaser where the
- 22 purchaser agrees to pay compensation for the contract and the provider agrees
- 23 to repair, replace, support, or maintain tangible personal property, digital
- 24 property, or real property according to the terms of the contract.
- 25 (b) "Extended warranty services" does not include the sale of a service contract
- 26 agreement for tangible personal property to be used by a small telephone
- 27 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in

1 KRS 65.7621 to deliver communications services as defined in KRS 136.602
2 or broadband;

3 (15) (a) "Finished artwork" means final art that is used for actual reproduction by
4 photomechanical or other processes or for display purposes.

5 (b) "Finished artwork" includes:

- 6 1. Assemblies;
- 7 2. Charts;
- 8 3. Designs;
- 9 4. Drawings;
- 10 5. Graphs;
- 11 6. Illustrative materials;
- 12 7. Lettering;
- 13 8. Mechanicals;
- 14 9. Paintings; and
- 15 10. Paste-ups;

16 **(16) "Firearm safe" means a locking container or other enclosure equipped with a**
17 **padlock, key lock, combination lock, or other locking device that is designed and**
18 **intended to prevent the unauthorized access to one (1) or more firearms by**
19 **anyone other than the lawful owner of the firearms;**

20 **(17) "Firearm safety course" means an educational safety course offered to the**
21 **general public that:**

22 **(a) Teaches participants the requisite basic knowledge and practical skills**
23 **relating to the safe handling, carrying, and storage of firearms;**

24 **(b) Teaches the basic applicable legal standards for self-defense under**
25 **Kentucky law and the possible civil and criminal penalties for failure to**
26 **abide by the current legal standards for self-defense under Kentucky law;**

27 **(c) Is taught by a trainer or instructor who is certified by the Kentucky**

1 *Department of Criminal Justice Training; and*
2 *(d) Is offered to members of the general public and not related to professional*
3 *development or licensure requirements;*

4 *(18) "Firearm safety device" means an integral device to be installed or equipped on a*
5 *firearm designed to aid the lawful owner of a firearm to prevent the unauthorized*
6 *use of the firearm by anyone other than the lawful owner of the firearm;*

7 ~~(19)~~(16) (a) "Gross receipts" and "sales price" mean the total amount or
8 consideration, including cash, credit, property, and services, for which
9 tangible personal property, digital property, or services are sold, leased, or
10 rented, valued in money, whether received in money or otherwise, without any
11 deduction for any of the following:

- 12 1. The retailer's cost of the tangible personal property, digital property, or
13 services sold;
- 14 2. The cost of the materials used, labor or service cost, interest, losses, all
15 costs of transportation to the retailer, all taxes imposed on the retailer, or
16 any other expense of the retailer;
- 17 3. Charges by the retailer for any services necessary to complete the sale;
- 18 4. Delivery charges, which are defined as charges by the retailer for the
19 preparation and delivery to a location designated by the purchaser
20 including transportation, shipping, postage, handling, crating, and
21 packing;
- 22 5. Any amount for which credit is given to the purchaser by the retailer,
23 other than credit for tangible personal property or digital property traded
24 when the tangible personal property or digital property traded is of like
25 kind and character to the property purchased and the property traded is
26 held by the retailer for resale; and
- 27 6. The amount charged for labor or services rendered in installing or

- 1 applying the tangible personal property, digital property, or service sold.
- 2 (b) "Gross receipts" and "sales price" shall include consideration received by the
- 3 retailer from a third party if:
- 4 1. The retailer actually receives consideration from a third party and the
- 5 consideration is directly related to a price reduction or discount on the
- 6 sale to the purchaser;
- 7 2. The retailer has an obligation to pass the price reduction or discount
- 8 through to the purchaser;
- 9 3. The amount of consideration attributable to the sale is fixed and
- 10 determinable by the retailer at the time of the sale of the item to the
- 11 purchaser; and
- 12 4. One (1) of the following criteria is met:
- 13 a. The purchaser presents a coupon, certificate, or other
- 14 documentation to the retailer to claim a price reduction or discount
- 15 where the coupon, certificate, or documentation is authorized,
- 16 distributed, or granted by a third party with the understanding that
- 17 the third party will reimburse any seller to whom the coupon,
- 18 certificate, or documentation is presented;
- 19 b. The price reduction or discount is identified as a third-party price
- 20 reduction or discount on the invoice received by the purchaser or
- 21 on a coupon, certificate, or other documentation presented by the
- 22 purchaser; or
- 23 c. The purchaser identifies himself or herself to the retailer as a
- 24 member of a group or organization entitled to a price reduction or
- 25 discount. A "preferred customer" card that is available to any
- 26 patron does not constitute membership in such a group.
- 27 (c) "Gross receipts" and "sales price" shall not include:

- 1 1. Discounts, including cash, term, or coupons that are not reimbursed by a
2 third party and that are allowed by a retailer and taken by a purchaser on
3 a sale;
- 4 2. Interest, financing, and carrying charges from credit extended on the sale
5 of tangible personal property, digital property, or services, if the amount
6 is separately stated on the invoice, bill of sale, or similar document given
7 to the purchaser;
- 8 3. Any taxes legally imposed directly on the purchaser that are separately
9 stated on the invoice, bill of sale, or similar document given to the
10 purchaser; or
- 11 4. Local alcohol regulatory license fees authorized under KRS 243.075 that
12 are separately stated on the invoice, bill of sale, or similar document
13 given to the purchaser.
- 14 (d) As used in this subsection, "third party" means a person other than the
15 purchaser;
- 16 ~~(20)~~~~(17)~~ "In this state" or "in the state" means within the exterior limits of the
17 Commonwealth and includes all territory within these limits owned by or ceded to
18 the United States of America;
- 19 ~~(21)~~~~(18)~~ "Industrial processing" includes:
- 20 (a) Refining;
- 21 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 22 (c) Mining, quarrying, fabricating, and industrial assembling;
- 23 (d) The processing and packaging of raw materials, in-process materials, and
24 finished products; and
- 25 (e) The processing and packaging of farm and dairy products for sale;
- 26 ~~(22)~~~~(19)~~ (a) "Lease or rental" means any transfer of possession or control of tangible
27 personal property for a fixed or indeterminate term for consideration. A lease

1 or rental shall include future options to:

- 2 1. Purchase the property; or
- 3 2. Extend the terms of the agreement and agreements covering trailers
- 4 where the amount of consideration may be increased or decreased by
- 5 reference to the amount realized upon sale or disposition of the property
- 6 as defined in 26 U.S.C. sec. 7701(h)(1).

7 (b) "Lease or rental" shall not include:

- 8 1. A transfer of possession or control of property under a security
- 9 agreement or deferred payment plan that requires the transfer of title
- 10 upon completion of the required payments;
- 11 2. A transfer of possession or control of property under an agreement that
- 12 requires the transfer of title upon completion of the required payments
- 13 and payment of an option price that does not exceed the greater of one
- 14 hundred dollars (\$100) or one percent (1%) of the total required
- 15 payments; or
- 16 3. Providing tangible personal property and an operator for the tangible
- 17 personal property for a fixed or indeterminate period of time. To qualify
- 18 for this exclusion, the operator must be necessary for the equipment to
- 19 perform as designed, and the operator must do more than maintain,
- 20 inspect, or setup the tangible personal property.

21 (c) This definition shall apply regardless of the classification of a transaction

22 under generally accepted accounting principles, the Internal Revenue Code, or

23 other provisions of federal, state, or local law;

24 ~~(23)~~~~(20)~~ (a) "Machinery for new and expanded industry" means machinery:

- 25 1. Directly used in the manufacturing or industrial processing process of:
- 26 a. Tangible personal property at a plant facility;
- 27 b. Distilled spirits or wine at a plant facility or on the premises of a

- 1 distiller, rectifier, winery, or small farm winery licensed under
2 KRS 243.030 that includes a retail establishment on the premises;
3 or
4 c. Malt beverages at a plant facility or on the premises of a brewer or
5 microbrewery licensed under KRS 243.040 that includes a retail
6 establishment;
- 7 2. Which is incorporated for the first time into:
8 a. A plant facility established in this state; or
9 b. Licensed premises located in this state; and
- 10 3. Which does not replace machinery in the plant facility or licensed
11 premises unless that machinery purchased to replace existing machinery:
12 a. Increases the consumption of recycled materials at the plant
13 facility by not less than ten percent (10%);
14 b. Performs different functions;
15 c. Is used to manufacture a different product; or
16 d. Has a greater productive capacity, as measured in units of
17 production, than the machinery being replaced.
- 18 (b) "Machinery for new and expanded industry" does not include repair,
19 replacement, or spare parts of any kind, regardless of whether the purchase of
20 repair, replacement, or spare parts is required by the manufacturer or seller as
21 a condition of sale or as a condition of warranty;
- 22 ~~(24)~~~~(21)~~ "Manufacturing" means any process through which material having little or no
23 commercial value for its intended use before processing has appreciable commercial
24 value for its intended use after processing by the machinery;
- 25 ~~(25)~~~~(22)~~ "Marketing services" means developing marketing objectives and policies,
26 sales forecasting, new product developing and pricing, licensing, and franchise
27 planning;

1 ~~(26)~~~~(23)~~ "Marketplace" means any physical or electronic means through which one (1)
2 or more retailers may advertise and sell tangible personal property, digital property,
3 or services, or lease tangible personal property or digital property, such as a catalog,
4 Internet Web site, or television or radio broadcast, regardless of whether the
5 tangible personal property, digital property, or retailer is physically present in this
6 state;

7 ~~(27)~~~~(24)~~ (a) "Marketplace provider" means a person, including any affiliate of the
8 person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this
9 paragraph as follows:

- 10 1. The person directly or indirectly:
 - 11 a. Lists, makes available, or advertises tangible personal property,
12 digital property, or services for sale by a marketplace retailer in a
13 marketplace owned, operated, or controlled by the person;
 - 14 b. Facilitates the sale of a marketplace retailer's product through a
15 marketplace by transmitting or otherwise communicating an offer
16 or acceptance of a retail sale of tangible personal property, digital
17 property, or services between a marketplace retailer and a
18 purchaser in a forum including a shop, store, booth, catalog,
19 Internet site, or similar forum;
 - 20 c. Owns, rents, licenses, makes available, or operates any electronic
21 or physical infrastructure or any property, process, method,
22 copyright, trademark, or patent that connects marketplace retailers
23 to purchasers for the purpose of making retail sales of tangible
24 personal property, digital property, or services;
 - 25 d. Provides a marketplace for making retail sales of tangible personal
26 property, digital property, or services, or otherwise facilitates retail
27 sales of tangible personal property, digital property, or services,

- 1 regardless of ownership or control of the tangible personal
2 property, digital property, or services, that are the subject of the
3 retail sale;
- 4 e. Provides software development or research and development
5 activities related to any activity described in this subparagraph, if
6 the software development or research and development activities
7 are directly related to the physical or electronic marketplace
8 provided by a marketplace provider;
- 9 f. Provides or offers fulfillment or storage services for a marketplace
10 retailer;
- 11 g. Sets prices for a marketplace retailer's sale of tangible personal
12 property, digital property, or services;
- 13 h. Provides or offers customer service to a marketplace retailer or a
14 marketplace retailer's customers, or accepts or assists with taking
15 orders, returns, or exchanges of tangible personal property, digital
16 property, or services sold by a marketplace retailer; or
- 17 i. Brands or otherwise identifies sales as those of the marketplace
18 provider; and
- 19 2. The person directly or indirectly:
- 20 a. Collects the sales price or purchase price of a retail sale of tangible
21 personal property, digital property, or services;
- 22 b. Provides payment processing services for a retail sale of tangible
23 personal property, digital property, or services;
- 24 c. Through terms and conditions, agreements, or arrangements with a
25 third party, collects payment in connection with a retail sale of
26 tangible personal property, digital property, or services from a
27 purchaser and transmits that payment to the marketplace retailer,

1 regardless of whether the person collecting and transmitting the
2 payment receives compensation or other consideration in exchange
3 for the service; or

4 d. Provides a virtual currency that purchasers are allowed or required
5 to use to purchase tangible personal property, digital property, or
6 services.

7 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
8 requirements of this subsection through the ownership, operation, or control
9 of a digital distribution service, digital distribution platform, online portal, or
10 application store;

11 ~~(28)~~~~(25)~~ "Marketplace retailer" means a seller that makes retail sales through any
12 marketplace owned, operated, or controlled by a marketplace provider;

13 ~~(29)~~~~(26)~~ (a) "Occasional sale" includes:

14 1. A sale of tangible personal property or digital property not held or used
15 by a seller in the course of an activity for which he or she is required to
16 hold a seller's permit, provided such sale is not one (1) of a series of
17 sales sufficient in number, scope, and character to constitute an activity
18 requiring the holding of a seller's permit. In the case of the sale of the
19 entire, or a substantial portion of the nonretail assets of the seller, the
20 number of previous sales of similar assets shall be disregarded in
21 determining whether or not the current sale or sales shall qualify as an
22 occasional sale; or

23 2. Any transfer of all or substantially all the tangible personal property or
24 digital property held or used by a person in the course of such an activity
25 when after such transfer the real or ultimate ownership of such property
26 is substantially similar to that which existed before such transfer.

27 (b) For the purposes of this subsection, stockholders, bondholders, partners, or

1 other persons holding an interest in a corporation or other entity are regarded
2 as having the "real or ultimate ownership" of the tangible personal property or
3 digital property of such corporation or other entity;

4 ~~(30)~~~~(27)~~ (a) "Other direct mail" means any direct mail that is not advertising and
5 promotional direct mail, regardless of whether advertising and promotional
6 direct mail is included in the same mailing.

7 (b) "Other direct mail" includes but is not limited to:

- 8 1. Transactional direct mail that contains personal information specific to
9 the addressee, including but not limited to invoices, bills, statements of
10 account, and payroll advices;
- 11 2. Any legally required mailings, including but not limited to privacy
12 notices, tax reports, and stockholder reports; and
- 13 3. Other nonpromotional direct mail delivered to existing or former
14 shareholders, customers, employees, or agents, including but not limited
15 to newsletters and informational pieces.

16 (c) "Other direct mail" does not include the development of billing information or
17 the provision of any data processing service that is more than incidental to the
18 production of printed material;

19 ~~(31)~~~~(28)~~ "Person" includes any individual, firm, copartnership, joint venture,
20 association, social club, fraternal organization, corporation, estate, trust, business
21 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
22 agency, or any other group or combination acting as a unit;

23 ~~(32)~~~~(29)~~ "Permanent," as the term applies to digital property, means perpetual or for an
24 indefinite or unspecified length of time;

25 ~~(33)~~~~(30)~~ (a) "Photography and photofinishing services" means:

- 26 1. The taking, developing, or printing of an original photograph; or
- 27 2. Image editing, including shadow removal, tone adjustments, vertical and

1 horizontal alignment and cropping, composite image creation,
2 formatting, watermarking printing, and delivery of an original
3 photograph in the form of tangible personal property, digital property, or
4 other media.

5 (b) "Photography and photofinishing services" does not include photography
6 services necessary for medical or dental health;

7 ~~(34)~~~~(31)~~ "Plant facility" means a single location that is exclusively dedicated to
8 manufacturing or industrial processing activities. A location shall be deemed to be
9 exclusively dedicated to manufacturing or industrial processing activities even if
10 retail sales are made there, provided that the retail sales are incidental to the
11 manufacturing or industrial processing activities occurring at the location. The term
12 "plant facility" shall not include any restaurant, grocery store, shopping center, or
13 other retail establishment;

14 ~~(35)~~~~(32)~~ (a) "Prewritten computer software" means:

- 15 1. Computer software, including prewritten upgrades, that are not designed
16 and developed by the author or other creator to the specifications of a
17 specific purchaser;
- 18 2. Software designed and developed by the author or other creator to the
19 specifications of a specific purchaser when it is sold to a person other
20 than the original purchaser; or
- 21 3. Any portion of prewritten computer software that is modified or
22 enhanced in any manner, where the modification or enhancement is
23 designed and developed to the specifications of a specific purchaser,
24 unless there is a reasonable, separately stated charge on an invoice or
25 other statement of the price to the purchaser for the modification or
26 enhancement.

27 (b) When a person modifies or enhances computer software of which the person

1 is not the author or creator, the person shall be deemed to be the author or
2 creator only of the modifications or enhancements the person actually made.

3 (c) The combining of two (2) or more prewritten computer software programs or
4 portions thereof does not cause the combination to be other than prewritten
5 computer software;

6 ~~(36)~~~~(33)~~ "Prewritten computer software access services" means the right of access to
7 prewritten computer software where the object of the transaction is to use the
8 prewritten computer software while possession of the prewritten computer software
9 is maintained by the seller or a third party, wherever located, regardless of whether
10 the charge for the access or use is on a per use, per user, per license, subscription, or
11 some other basis;

12 ~~(37)~~~~(34)~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,
13 lease, or rental, conditional or otherwise, in any manner or by any means
14 whatsoever, of:

- 15 1. Tangible personal property;
 - 16 2. An extended warranty service;
 - 17 3. Digital property transferred electronically; or
 - 18 4. Services included in KRS 139.200;
- 19 for a consideration.

20 (b) "Purchase" includes:

- 21 1. When performed outside this state or when the customer gives a resale
22 certificate, the producing, fabricating, processing, printing, or imprinting
23 of tangible personal property for a consideration for consumers who
24 furnish either directly or indirectly the materials used in the producing,
25 fabricating, processing, printing, or imprinting;
- 26 2. A transaction whereby the possession of tangible personal property or
27 digital property is transferred but the seller retains the title as security for

1 the payment of the price; and

2 3. A transfer for a consideration of the title or possession of tangible
3 personal property or digital property which has been produced,
4 fabricated, or printed to the special order of the customer, or of any
5 publication;

6 ~~(38)~~~~[(35)]~~ "Recycled materials" means materials which have been recovered or diverted
7 from the solid waste stream and reused or returned to use in the form of raw
8 materials or products;

9 ~~(39)~~~~[(36)]~~ "Recycling purposes" means those activities undertaken in which materials
10 that would otherwise become solid waste are collected, separated, or processed in
11 order to be reused or returned to use in the form of raw materials or products;

12 ~~(40)~~~~[(37)]~~ "Remote retailer" means a retailer with no physical presence in this state;

13 ~~(41)~~~~[(38)]~~ (a) "Repair, replacement, or spare parts" means any tangible personal
14 property used to maintain, restore, mend, or repair machinery or equipment.

15 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
16 industrial tools;

17 ~~(42)~~~~[(39)]~~ (a) "Retailer" means:

18 1. Every person engaged in the business of making retail sales of tangible
19 personal property, digital property, or furnishing any services in a retail
20 sale included in KRS 139.200;

21 2. Every person engaged in the business of making sales at auction of
22 tangible personal property or digital property owned by the person or
23 others for storage, use or other consumption, except as provided in
24 paragraph (c) of this subsection;

25 3. Every person making more than two (2) retail sales of tangible personal
26 property, digital property, or services included in KRS 139.200 during
27 any twelve (12) month period, including sales made in the capacity of

- 1 assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
- 2 4. Any person conducting a race meeting under the provision of KRS
- 3 Chapter 230, with respect to horses which are claimed during the
- 4 meeting.
- 5 (b) When the department determines that it is necessary for the efficient
- 6 administration of this chapter to regard any salesmen, representatives,
- 7 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
- 8 employers under whom they operate or from whom they obtain the tangible
- 9 personal property, digital property, or services sold by them, irrespective of
- 10 whether they are making sales on their own behalf or on behalf of the dealers,
- 11 distributors, supervisors or employers, the department may so regard them and
- 12 may regard the dealers, distributors, supervisors or employers as retailers for
- 13 purposes of this chapter.
- 14 (c) 1. Any person making sales at a charitable auction for a qualifying entity
- 15 shall not be a retailer for purposes of the sales made at the charitable
- 16 auction if:
- 17 a. The qualifying entity, not the person making sales at the auction, is
- 18 sponsoring the auction;
- 19 b. The purchaser of tangible personal property at the auction directly
- 20 pays the qualifying entity sponsoring the auction for the property
- 21 and not the person making the sales at the auction; and
- 22 c. The qualifying entity, not the person making sales at the auction, is
- 23 responsible for the collection, control, and disbursement of the
- 24 auction proceeds.
- 25 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
- 26 the qualifying entity sponsoring the auction shall be the retailer for
- 27 purposes of the sales made at the charitable auction.

- 1 3. For purposes of this paragraph, "qualifying entity" means a resident:
- 2 a. Church;
- 3 b. School;
- 4 c. Civic club; or
- 5 d. Any other nonprofit charitable, religious, or educational
- 6 organization;

7 ~~(43)~~~~[(40)]~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,

8 sublease, or subrent;

9 ~~(44)~~~~[(41)]~~ (a) "Ringtones" means digitized sound files that are downloaded onto a

10 device and that may be used to alert the customer with respect to a

11 communication.

12 (b) "Ringtones" shall not include ringback tones or other digital files that are not

13 stored on the purchaser's communications device;

14 ~~(45)~~~~[(42)]~~ (a) "Sale" means:

- 15 1. The furnishing of any services included in KRS 139.200;
- 16 2. Any transfer of title or possession, exchange, barter, lease, or rental,
- 17 conditional or otherwise, in any manner or by any means whatsoever, of:
- 18 a. Tangible personal property; or
- 19 b. Digital property transferred electronically;

20 for a consideration.

21 (b) "Sale" includes but is not limited to:

- 22 1. The producing, fabricating, processing, printing, or imprinting of
- 23 tangible personal property or digital property for a consideration for
- 24 purchasers who furnish, either directly or indirectly, the materials used
- 25 in the producing, fabricating, processing, printing, or imprinting;
- 26 2. A transaction whereby the possession of tangible personal property or
- 27 digital property is transferred, but the seller retains the title as security

1 for the payment of the price; and

2 3. A transfer for a consideration of the title or possession of tangible
3 personal property or digital property which has been produced,
4 fabricated, or printed to the special order of the purchaser.

5 (c) This definition shall apply regardless of the classification of a transaction
6 under generally accepted accounting principles, the Internal Revenue Code, or
7 other provisions of federal, state, or local law;

8 ~~(46)~~~~[(43)]~~ "Seller" includes every person engaged in the business of selling tangible
9 personal property, digital property, or services of a kind, the gross receipts from the
10 retail sale of which are required to be included in the measure of the sales tax, and
11 every person engaged in making sales for resale;

12 ~~(47)~~~~[(44)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose
13 except sale in the regular course of business or subsequent use solely outside
14 this state of tangible personal property or digital property purchased from a
15 retailer.

16 (b) "Storage" does not include the keeping, retaining, or exercising any right or
17 power over tangible personal property for the purpose of subsequently
18 transporting it outside the state for use thereafter solely outside the state, or for
19 the purpose of being processed, fabricated, or manufactured into, attached to,
20 or incorporated into, other tangible personal property to be transported outside
21 the state and thereafter used solely outside the state;

22 ~~(48)~~~~[(45)]~~ "Tangible personal property" means personal property which may be seen,
23 weighed, measured, felt, or touched, or which is in any other manner perceptible to
24 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
25 and prewritten computer software;

26 ~~(49)~~~~[(46)]~~ "Taxpayer" means any person liable for tax under this chapter;

27 ~~(50)~~~~[(47)]~~ "Telemarketing services" means services provided via telephone, facsimile,

1 electronic mail, or other modes of communications to another person, which are
2 unsolicited by that person, for the purposes of:

- 3 (a) 1. Promoting products or services;
4 2. Taking orders; or
5 3. Providing information or assistance regarding the products or services;
6 or

7 (b) Soliciting contributions;

8 ~~(51)~~~~(48)~~ "Transferred electronically" means accessed or obtained by the purchaser by
9 means other than tangible storage media; and

10 ~~(52)~~~~(49)~~ (a) "Use" includes the exercise of:

- 11 1. Any right or power over tangible personal property or digital property
12 incident to the ownership of that property, or by any transaction in which
13 possession is given, or by any transaction involving digital property or
14 tangible personal property where the right of access is granted; or
15 2. Any right or power to benefit any services subject to tax under KRS
16 139.200(2)(p) to (ay).

17 (b) "Use" does not include the keeping, retaining, or exercising any right or power
18 over tangible personal property or digital property for the purpose of:

- 19 1. Selling tangible personal property or digital property in the regular
20 course of business; or
21 2. Subsequently transporting tangible personal property outside the state
22 for use thereafter solely outside the state, or for the purpose of being
23 processed, fabricated, or manufactured into, attached to, or incorporated
24 into, other tangible personal property to be transported outside the state
25 and thereafter used solely outside the state.

26 ➔Section 2. KRS 139.480 (Effective January 1, 2023) is amended to read as
27 follows:

1 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at
2 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not
3 include the sale, use, storage, or other consumption of:

4 (1) Locomotives or rolling stock, including materials for the construction, repair, or
5 modification thereof, or fuel or supplies for the direct operation of locomotives and
6 trains, used or to be used in interstate commerce;

7 (2) Coal for the manufacture of electricity;

8 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
9 processing, mining, or refining and any related distribution, transmission, and
10 transportation services for this energy that are billed to the user, to the extent
11 that the cost of the energy or energy-producing fuels used, and related
12 distribution, transmission, and transportation services for this energy that are
13 billed to the user exceed three percent (3%) of the cost of production.

14 (b) Cost of production shall be computed on the basis of a plant facility, which
15 shall include all operations within the continuous, unbroken, integrated
16 manufacturing or industrial processing process that ends with a product
17 packaged and ready for sale.

18 (c) A person who performs a manufacturing or industrial processing activity for a
19 fee and does not take ownership of the tangible personal property that is
20 incorporated into, or becomes the product of, the manufacturing or industrial
21 processing activity is a toller. For periods on or after July 1, 2018, the costs of
22 the tangible personal property shall be excluded from the toller's cost of
23 production at a plant facility with tolling operations in place as of July 1,
24 2018.

25 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
26 tangible personal property shall be excluded from the toller's cost of
27 production if the toller:

- 1 1. Maintains a binding contract for periods after July 1, 2018, that governs
2 the terms, conditions, and responsibilities with a separate legal entity,
3 which holds title to the tangible personal property that is incorporated
4 into, or becomes the product of, the manufacturing or industrial
5 processing activity;
- 6 2. Maintains accounting records that show the expenses it incurs to fulfill
7 the binding contract that include but are not limited to energy or energy-
8 producing fuels, materials, labor, procurement, depreciation,
9 maintenance, taxes, administration, and office expenses;
- 10 3. Maintains separate payroll, bank accounts, tax returns, and other records
11 that demonstrate its independent operations in the performance of its
12 tolling responsibilities;
- 13 4. Demonstrates one (1) or more substantial business purposes for the
14 tolling operations germane to the overall manufacturing, industrial
15 processing activities, or corporate structure at the plant facility. A
16 business purpose is a purpose other than the reduction of sales tax
17 liability for the purchases of energy and energy-producing fuels; and
- 18 5. Provides information to the department upon request that documents
19 fulfillment of the requirements in subparagraphs 1. to 4. of this
20 paragraph and gives an overview of its tolling operations with an
21 explanation of how the tolling operations relate and connect with all
22 other manufacturing or industrial processing activities occurring at the
23 plant facility;
- 24 (4) Livestock of a kind the products of which ordinarily constitute food for human
25 consumption, provided the sales are made for breeding or dairy purposes and by or
26 to a person regularly engaged in the business of farming;
- 27 (5) Poultry for use in breeding or egg production;

- 1 (6) Farm work stock for use in farming operations;
- 2 (7) Seeds, the products of which ordinarily constitute food for human consumption or
3 are to be sold in the regular course of business, and commercial fertilizer to be
4 applied on land, the products from which are to be used for food for human
5 consumption or are to be sold in the regular course of business; provided such sales
6 are made to farmers who are regularly engaged in the occupation of tilling and
7 cultivating the soil for the production of crops as a business, or who are regularly
8 engaged in the occupation of raising and feeding livestock or poultry or producing
9 milk for sale; and provided further that tangible personal property so sold is to be
10 used only by those persons designated above who are so purchasing;
- 11 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
12 used in the production of crops as a business, or in the raising and feeding of
13 livestock or poultry, the products of which ordinarily constitute food for human
14 consumption;
- 15 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
16 products of which ordinarily constitute food for human consumption;
- 17 (10) Machinery for new and expanded industry;
- 18 (11) Farm machinery. As used in this section, the term "farm machinery":
- 19 (a) Means machinery used exclusively and directly in the occupation of:
- 20 1. Tilling the soil for the production of crops as a business;
- 21 2. Raising and feeding livestock or poultry for sale; or
- 22 3. Producing milk for sale;
- 23 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
24 replacement parts which are used or manufactured for use on, or in the
25 operation of farm machinery and which are necessary to the operation of the
26 machinery, and are customarily so used, including but not limited to combine
27 header wagons, combine header trailers, or any other implements specifically

- 1 designed and used to move or transport a combine head; and
- 2 (c) Does not include:
- 3 1. Automobiles;
- 4 2. Trucks;
- 5 3. Trailers, except combine header trailers; or
- 6 4. Truck-trailer combinations;
- 7 (12) Tombstones and other memorial grave markers;
- 8 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
- 9 or handling. The exemption applies to the equipment, machinery, attachments,
- 10 repair and replacement parts, and any materials incorporated into the construction,
- 11 renovation, or repair of the facilities;
- 12 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption
- 13 shall apply to the equipment, machinery, attachments, repair and replacement parts,
- 14 and any materials incorporated into the construction, renovation, or repair of the
- 15 facilities. The exemption shall apply but not be limited to vent board equipment,
- 16 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
- 17 and curtain systems. In addition, the exemption shall apply whether or not the seller
- 18 is under contract to deliver, assemble, and incorporate into real estate the
- 19 equipment, machinery, attachments, repair and replacement parts, and any materials
- 20 incorporated into the construction, renovation, or repair of the facilities;
- 21 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
- 22 and directly to:
- 23 (a) Operate farm machinery as defined in subsection (11) of this section;
- 24 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
- 25 (13) of this section;
- 26 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
- 27 this section;

- 1 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 2 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
3 section; or
- 4 (f) Operate on-farm dairy facilities;
- 5 (16) Textbooks, including related workbooks and other course materials, purchased for
6 use in a course of study conducted by an institution which qualifies as a nonprofit
7 educational institution under KRS 139.495. The term "course materials" means only
8 those items specifically required of all students for a particular course but shall not
9 include notebooks, paper, pencils, calculators, tape recorders, or similar student
10 aids;
- 11 (17) Any property which has been certified as an alcohol production facility as defined in
12 KRS 247.910;
- 13 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
14 direct operation of aircraft in interstate commerce and used exclusively for the
15 conveyance of property or passengers for hire. Nominal intrastate use shall not
16 subject the property to the taxes imposed by this chapter;
- 17 (19) Any property which has been certified as a fluidized bed energy production facility
18 as defined in KRS 211.390;
- 19 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
20 modification, or expansion of a blast furnace or any of its components or
21 appurtenant equipment or structures as part of an approved supplemental
22 project, as defined by KRS 154.26-010; and
- 23 2. Materials, supplies, and repair or replacement parts purchased for use in
24 the operation and maintenance of a blast furnace and related carbon
25 steel-making operations as part of an approved supplemental project, as
26 defined by KRS 154.26-010.
- 27 (b) The exemptions provided in this subsection shall be effective for sales made:

- 1 1. On and after July 1, 2018; and
- 2 2. During the term of a supplemental project agreement entered into
- 3 pursuant to KRS 154.26-090;
- 4 (21) Beginning on October 1, 1986, food or food products purchased for human
- 5 consumption with food coupons issued by the United States Department of
- 6 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
- 7 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
- 8 continue participation in the federal food stamp program;
- 9 (22) Machinery or equipment purchased or leased by a business, industry, or
- 10 organization in order to collect, source separate, compress, bale, shred, or otherwise
- 11 handle waste materials if the machinery or equipment is primarily used for recycling
- 12 purposes;
- 13 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
- 14 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
- 15 products, and the following items used in this agricultural pursuit:
- 16 (a) Feed and feed additives;
- 17 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 18 (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 19 replacement parts, and any materials incorporated into the construction,
- 20 renovation, or repair of the facilities. The exemption shall apply to incubation
- 21 systems, egg processing equipment, waterer and feeding systems, brooding
- 22 systems, ventilation systems, alarm systems, and curtain systems. In addition,
- 23 the exemption shall apply whether or not the seller is under contract to deliver,
- 24 assemble, and incorporate into real estate the equipment, machinery,
- 25 attachments, repair and replacement parts, and any materials incorporated into
- 26 the construction, renovation, or repair of the facilities;
- 27 (24) Embryos and semen that are used in the reproduction of livestock, if the products of

- 1 these embryos and semen ordinarily constitute food for human consumption, and if
2 the sale is made to a person engaged in the business of farming;
- 3 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for
4 the breeding and production of hides, breeding stock, fiber and wool products, meat,
5 and llama and alpaca by-products, and the following items used in this pursuit:
- 6 (a) Feed and feed additives;
- 7 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 8 and
- 9 (c) On-farm facilities, including equipment, machinery, attachments, repair and
10 replacement parts, and any materials incorporated into the construction,
11 renovation, or repair of the facilities. The exemption shall apply to waterer
12 and feeding systems, ventilation systems, and alarm systems. In addition, the
13 exemption shall apply whether or not the seller is under contract to deliver,
14 assemble, and incorporate into real estate the equipment, machinery,
15 attachments, repair and replacement parts, and any materials incorporated into
16 the construction, renovation, or repair of the facilities;
- 17 (26) Baling twine and baling wire for the baling of hay and straw;
- 18 (27) Water sold to a person regularly engaged in the business of farming and used in the:
- 19 (a) Production of crops;
- 20 (b) Production of milk for sale; or
- 21 (c) Raising and feeding of:
- 22 1. Livestock or poultry, the products of which ordinarily constitute food for
23 human consumption; or
- 24 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- 25 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
26 production of hides, breeding stock, meat, and buffalo by-products, and the
27 following items used in this pursuit:

- 1 (a) Feed and feed additives;
- 2 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 3 (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 4 replacement parts, and any materials incorporated into the construction,
- 5 renovation, or repair of the facilities. The exemption shall apply to waterer
- 6 and feeding systems, ventilation systems, and alarm systems. In addition, the
- 7 exemption shall apply whether or not the seller is under contract to deliver,
- 8 assemble, and incorporate into real estate the equipment, machinery,
- 9 attachments, repair and replacement parts, and any materials incorporated into
- 10 the construction, renovation, or repair of the facilities;
- 11 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
- 12 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
- 13 and the following items used in this pursuit:
- 14 (a) Feed and feed additives;
- 15 (b) Water;
- 16 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 17 and
- 18 (d) On-farm facilities, including equipment, machinery, attachments, repair and
- 19 replacement parts, and any materials incorporated into the construction,
- 20 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
- 21 petroleum gas, or natural gas used to operate the facilities. The exemption
- 22 shall apply, but not be limited to: waterer and feeding systems; ventilation,
- 23 aeration, and heating systems; processing and storage systems; production
- 24 systems such as ponds, tanks, and raceways; harvest and transport equipment
- 25 and systems; and alarm systems. In addition, the exemption shall apply
- 26 whether or not the seller is under contract to deliver, assemble, and
- 27 incorporate into real estate the equipment, machinery, attachments, repair and

1 replacement parts, and any materials incorporated into the construction,
2 renovation, or repair of the facilities;

3 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the
4 production of hides, breeding stock, meat, and cervid by-products, and the
5 following items used in this pursuit:

6 (a) Feed and feed additives;

7 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and

8 (c) On-site facilities, including equipment, machinery, attachments, repair and
9 replacement parts, and any materials incorporated into the construction,
10 renovation, or repair of the facilities. In addition, the exemption shall apply
11 whether or not the seller is under contract to deliver, assemble, and
12 incorporate into real estate the equipment, machinery, attachments, repair and
13 replacement parts, and any materials incorporated into the construction,
14 renovation, or repair of the facilities;

15 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor
16 vehicle, including any towed unit, used exclusively in interstate commerce for
17 the conveyance of property or passengers for hire, provided the motor vehicle
18 is licensed for use on the highway and its declared gross vehicle weight with
19 any towed unit is forty-four thousand and one (44,001) pounds or greater.
20 Nominal intrastate use shall not subject the property to the taxes imposed by
21 this chapter;

22 (b) Repair or replacement parts for the direct operation and maintenance of a
23 motor vehicle operating under a charter bus certificate issued by the
24 Transportation Cabinet under KRS Chapter 281, or under similar authority
25 granted by the United States Department of Transportation; and

26 (c) For the purposes of this subsection, "repair or replacement parts" means tires,
27 brakes, engines, transmissions, drive trains, chassis, body parts, and their

1 components. "Repair or replacement parts" shall not include fuel, machine
2 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential
3 to the operation of the motor vehicle itself, except when sold as part of the
4 assembled unit, such as cigarette lighters, radios, lighting fixtures not
5 otherwise required by the manufacturer for operation of the vehicle, or tool or
6 utility boxes;

7 (32) Food donated by a retail food establishment or any other entity regulated under KRS
8 217.127 to a nonprofit organization for distribution to the needy; ~~and~~

9 (33) Drugs and over-the counter drugs, as defined in KRS 139.472, that are purchased by
10 a person regularly engaged in the business of farming and used in the treatment of
11 cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic
12 organisms, or cervids; and

13 **(34) (a) Firearm safes, firearm safety courses, and firearm safety devices.**

14 **(b) The exemption provided in paragraph (a) of this subsection applies to items**
15 **sold or purchased on or after July 1, 2023, but before July 1, 2027.**

16 **(c) On or before August 1, 2024, and on or before August 1 of each year**
17 **thereafter as long as the exemption applies, the department shall report to**
18 **the Interim Joint Committee on Appropriations and Revenue the total**
19 **amount of the exemption that has been claimed for the immediately**
20 **preceding fiscal year and the total cumulative amount of the exemptions**
21 **claimed.**